

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ERIC LAMAR TYLER,

Defendant-Appellant.

UNPUBLISHED

June 19, 2007

No. 269196

Wayne Circuit Court

LC No. 05-009324

Before: Bandstra, P.J., and Zahra and Fort Hood, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of assault with intent to do great bodily harm less than murder, MCL 750.84, and possession of a firearm during the commission of felony, MCL 750.227b. Defendant was sentenced to 1-1/2 to ten years' imprisonment for the assault conviction, to be served consecutive to two years' imprisonment for the felony-firearm conviction. He appeals as of right. We affirm.

Defendant's convictions arise from a shooting incident in Detroit on August 7, 2005. About a week before the shooting, the victim spoke with the father of Brian Powell to voice his concerns about Powell and cars being broken into in the neighborhood. During the evening of August 7, 2005, at about 10:50 p.m., the victim was shot multiple times while watering the lawn in front of his house on Chandler Park Drive between Lenox and Drexel Streets. The victim testified that defendant and Powell's brother, Anthony Player, fired weapons at him after walking toward his house from Drexel Street. The victim claimed that he saw Powell coming from Lenox Street as he turned to run into his house. Powell was firing a gun at the victim. The victim was treated at a hospital for multiple gunshot wounds. Defendant presented an alibi defense and claimed that the victim's identification of him was not credible.

On appeal, defendant alleges that the trial court erred by not allowing defense counsel an opportunity to obtain the victim's psychiatric records for use at trial. Defendant argues that the victim's psychiatric records would have been admissible if they showed that the victim had past delusional behavior, with a skewed ability to perceive reality, and required psychotropic drugs to manage his condition. Defendant seeks a remand to the trial court to review the victim's medical records to determine if the victim has a significant delusional impairment that would cast doubt on his testimony that defendant was one of his assailants.

The trial court's decision whether to admit evidence is reviewed for an abuse of discretion. *People v Lukity*, 460 Mich 484, 488; 596 NW2d 607 (1999). The trial court's decision to grant or deny a request for a continuance or adjournment is also reviewed for an abuse of discretion. *People v Walter Jackson, Jr.*, 467 Mich 272, 276; 650 NW2d 665 (2002). In general, an abuse of discretion occurs when a trial court's decision falls outside the range of reasonable and principled outcomes. *People v Babcock*, 469 Mich 247, 269; 666 NW2d 231 (2003).

The record discloses that the trial court conducted an in camera review of the victim's recent medical history, but found no indication of false allegations, delusions, or paranoid schizophrenia. The trial court also reviewed the victim's probate court records and allowed defense counsel to cross-examine the victim regarding the victim's past psychiatric history indicated in those records.

At trial, defense counsel asserted that a continuance was necessary to locate additional medical records because various treatment facilities had closed since the early 1990s when the victim purportedly received treatment. However, at trial and now on appeal, defendant fails to identify specific facilities, treating physicians, and medical records. Rather, it is asserted that those medical records *may* result in relevant information. However, defendant, as the appellant, has the "burden of furnishing the reviewing court with a record to verify the factual basis of any argument upon which reversal is predicated." *People v Elston*, 462 Mich 751, 762; 614 NW2d 595 (2000).

Moreover, irrespective of any past medical issues, the best evidence of the victim's mental condition at the time of the shooting was the medical record during the victim's hospital stay for the bullet wounds. Defendant failed to utilize those records to determine whether the victim was currently prescribed medications and whether any medications were in the victim's system at the time of his hospitalization. Although the defense described the victim as suffering from paranoia and hallucinations, he was the custodial parent of two children. There was no indication that his fitness as a parent was called into question by his mental state. Therefore, we cannot conclude that the trial court's ruling regarding a continuance to obtain additional medical records, the exclusion of medical records, and the extent to which the victim could be questioned about his medical history constituted an abuse of discretion.

Next, defendant argues that the evidence was insufficient to prove that he committed an assault against the victim. We disagree. In evaluating this claim, we must view the evidence in a light most favorable to the prosecution to determine if a rational trier of fact could have found the essential elements of the crime proven beyond a reasonable doubt. *People v Wolfe*, 440 Mich 508, 515; 489 NW2d 748, amended 441 Mich 1201 (1992). Here, there was overwhelming evidence that the victim was shot outside his home and then taken to a hospital for treatment. The victim's wife corroborated the victim's testimony that multiple gunshots were fired after the victim went outside to water the lawn, and the victim's medical record from the hospital was introduced at trial to substantiate his injuries. Further, the victim identified defendant as one of the assailants. The weight and credibility of the victim's identification testimony was for the jury to decide. *Wolfe, supra* at 514-515; see also *People v Lemmon*, 456 Mich 625, 637; 576 NW2d 129 (1998). Viewed in a light most favorable to the prosecution, the evidence was sufficient to identify defendant as one of the assailants.

Next, defendant argues that the trial court erred in refusing the jury's request during deliberations to have the victim's testimony read, and by essentially foreclosing the jury from making a later request for the testimony. We disagree with defendant's claim that the trial court effectively foreclosed the jury from making a later request for the testimony. In any event, defense counsel's approval of the trial court's response to the jury's request for the testimony and instruction that the jury should rely on its collective memories "at this point" constitutes a waiver of this issue. *People v Carter*, 462 Mich 206, 216; 612 NW2d 144 (2000).

Finally, defendant claims that there was no factual support for the trial court's decision to score ten points for offense variable (OV) 4, MCL 777.34. A trial court's scoring decision will be upheld if there is any evidence to support it. *People v Kegler*, 268 Mich App 187, 190; 706 NW2d 744 (2005); *People v Wilkens*, 267 Mich App 728, 740; 705 NW2d 728 (2005).

MCL 777.34(1)(a) provides that OV 4 should be scored at ten points if serious psychological injury requiring professional treatment occurred to a victim. The court is to score ten points "if the serious psychological injury may require professional treatment. In making this determination, the fact that treatment has not been sought is not conclusive." MCL 777.34(2). Here, the victim's impact statement in the presentence report indicates that the victim was more concerned about the impact of the shooting on his family, than his own well-being. He expressed extreme concern that family members were inside the house when he was shot. He stated that his family was now scared in the evening and became nervous when someone comes to the door. Although the victim did not state that he required psychological treatment because of the shooting, the trial court considered the facts and circumstances of the shooting in determining that OV 4 should be scored at ten points. The victim testified at trial that his reaction to being shot was that he "was in shock like I was – I know I had a matter of time that you know I was going to die." Considering the evidence that the victim was shot multiple times while standing in front of his own home, we conclude that the trial court had a sufficient evidentiary basis for inferring that the victim suffered a serious psychological injury, and not merely physical injuries, that may require professional treatment. Therefore, we uphold its score of ten points for OV 4.

Affirmed.

/s/ Richard A. Bandstra

/s/ Brian K. Zahra

/s/ Karen M. Fort Hood